

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NIKO SIMMONS,

Petitioner,

Case Number: 2:11-CV-11869
HONORABLE SEAN F. COX

v.

JEFFREY WOODS,

Respondent.

**ORDER DENYING PETITIONER'S
MOTION FOR RELIEF FROM JUDGMENT**

On February 27, 2014, the Court denied Michigan state prisoner Niko Simmons' petition for a writ of habeas corpus on the ground that it was not timely filed and denied a certificate of appealability. Petitioner then moved in the Sixth Circuit Court of Appeals for a certificate of appealability. The Court of Appeals denied the application for a certificate of appealability. *Simmons v. MacLaren*, No. 14-1568 (6th Cir. Sept. 30, 2014), ECF No. 24. This matter is now before the Court on Petitioner's Motion for Relief from Judgment. The Court denies the motion.

Petitioner seeks relief from judgment under Fed. R. Civ. P. 60(b)(4). Rule 60(b)(4) provides for relief in circumstances where the underlying judgment is void. *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995). Rule 60(b) motions filed under Rule 60(b)(4) must be brought "within a reasonable time." Fed. R. Civ. P. 60(c)(1). Determining whether a motion has been filed within a reasonable time

“ordinarily depends on the facts of a given case including the length and circumstances of the delay, the prejudice to the opposing party by reason of the delay, and the circumstances compelling equitable relief.” *Olle v. Henry & Wright, Corp.*, 910 F.2d 357, 365 (6th Cir. 1990). The judgment in this case was entered on February 27, 2014, and the motion is signed and dated by Petitioner on April 20, 2016, over two years later. Petitioner provides no explanation for why he waited so long to file his motion. He does not claim newly-discovered evidence or that he was previously unaware of the basis for his motion. There are no circumstances compelling equitable relief in this case. Given these factors, the Court finds that Petitioner’s motion was not filed within a reasonable time.

Petitioner’s Motion for Relief from Judgment (ECF No. 25) is DENIED.

Dated: October 13, 2016

S/ Sean F. Cox

Sean F. Cox

U. S. District Judge

I hereby certify that on October 13, 2016, the foregoing document was served on counsel of record via electronic means and upon Niko Simmons via First Class mail at the address below:

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S/ J. McCoy

Case Manager